REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. In its petition for a writ of certiorari, petitioners noted a direct conflict of authority concerning the treatment of the attorney-client privilege. Two recent decisions have exacerbated this conflict, thus evincing that this question is of such large practical importance that it should be entertained by this Court.

In *United States v. Schoeberlein*, 335 F. Supp. 1048 (D. Md. 1971) the government was successful in compelling Schoeberlein, an accountant-attorney, to produce the tax records of his client. The court held that the privilege had been lost because the records had been shown to a government agent on a prior occasion. However, in *Richardson v. Hamilton Int'l Corp.*, 333 F. Supp. 1049 (E.D. Pa. 1971), the court upheld the client's claim of the attorney-client privilege by denying a shareholder's derivative suit against the corporation because the shareholder was also an attorney who had done extensive legal research for the corporation. The court noted at p. 1051 that:

> "No authority need be cited for the proposition that an attorney may not participate in litigation if his participation would violate his ethical duty to a former client."

Therefore, a taxpayer who obtains the assistance of counsel in tax litigation is confronted with squarely contrary holdings on the question of what duty his attorney owed to him in keeping pertinent matters confidential. Unless this conflict is resolved, an unjustifiable discrimination between persons in different jurisdictions will result.

2. Rule 58 of the Supreme Court allows a petition for rehearing to state other substantial grounds available to petitioner although not previously presented. In *United*

States v. Walker, 217 F. Supp. 828 (D. S.C. 1963), it was held that no assessment of a deficiency in respect of the tax imposed by this chapter (income tax) shall be made until the decision of the Tax Court has become final. Petitioners maintain that they were assessed a deficiency before the finality of a Tax Court order and were thus deprived of their constitutional rights.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

FELIX S. JACOB,
Counsel for Petitioners.

May, 1972.

CERTIFICATE OF COUNSEL

I hereby certify that the aforegoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

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Counsel for Petitioners.